

PETITIONER:
SHANGRILA FOOD PRODUCTS LTD. & ANR.

Vs.

RESPONDENT:
LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER

DATE OF JUDGMENT: 09/07/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MANOHAR SUJATA V. (J)

CITATION:
1996 SCC (5) 54 JT 1996 (6) 522
1996 SCALE (5) 289

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Punchhi, J.

Leave granted.

This appeal is virtually against the judgment and order of a learned Single Judge of the Bombay High Court dated 9-11-1993 passed in Writ Petition No.2949 of 1993 against which Letters Patent Appeal No.1 of 1994 was dismissed summarily by a Division Bench of that Court on 14-1-1994.

The learned Single Judge was spared the ordeal of recounting the checkered history of the litigation between the parties because of the reasonable stand taken by both the sides. We assume that we too have been spared likewise and the parties continue to be reasonable. It so happens that there is a building known as Great Social Building situate at 60, Sir P.M. Road, Fort, Bombay, which once belonged to the Great Social Life Insurance Co. Ltd. It appears that M/s. Interseas Corporation had taken on rent the fourth floor of the said building sometime in the year 1944. A portion carved out therefrom by a wooden partition was apparently sublet by M/s. Interseas Corporation to the appellant M/s. Shangrila Food Products Ltd. in July 1951. It also appears that M/s. S.M. Enterprises also became sub-lessees of M/s. Interseas Corporation of another portion of the property.

On the setting up of the Life Insurance Corporation of India under the Life Insurance Corporation of India Act, 1956 all the assets and liabilities of the said Great Social Life Insurance Company were taken over by the Life Insurance Corporation of India. It is appellants' case that in consequence thereof, M/s. Interseas Corporation became the tenant of the Life Insurance Corporation and the appellant company became the sub-tenant by operation of law in relation to the premises in question. Further it is the case of the appellant company that it has become a deemed tenant under the respondent Life Insurance Corporation because of

the Bombay Rents Hotel and Lodging Houses Rates Control (Amendment) Ordinance of 1959.

Legal proceedings were initiated by the Life Insurance Corporation of India, the respondent herein, against the appellant Company and one of its shareholders-cum-Directors, for possession of the premises in question under the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the Act"). The Estate Officer after conducting the requisite inquiry as contemplated under the Act passed an order of eviction of the original tenants as also the appellant-Company holding it as unauthorised occupant being unlawful sub-tenant of the original tenant. The Estate Officer also passed an order for damages to the tune of about Rs.12 lakhs.

Being aggrieved against the said order of eviction as well as damages, appeals were preferred by the appellant Company as well as the original tenant before the Principal Bench, City Civil Court, Bombay. The appellate Court upheld the order of eviction but reversed the order relating to damages, coming to the conclusion that there was no evidence in support of the order. The said order of eviction was thus challenged by the appellant Company before the High Court of Bombay. But the respondent-Life Insurance Corporation of India, did not choose to file any Writ Petition challenging those orders whereby its claim for damages had been negated by the appellate Court.

The learned Single Judge of the High Court examined the files relating to the case and entertained the belief that the Estate Officer had not dealt with the matter satisfactorily inasmuch as material from the earlier litigation, which had been fought prior to the instant proceedings, had per se been inducted into the files and there was hardly any effective or clear discussion on the issue whether the appellant Company was an unlawful sub-tenant and therefore in unauthorised occupation. On the basis thereof, the learned Single Judge expressed his views that the interest of justice required that the matter be remanded to the Estate Officer for fresh decision. It is at that juncture that the learned counsel appearing for the Life Insurance Corporation took exception to such course and yet at the same time bargained that if remand be considered necessary, it should open an opportunity to the Life Insurance Corporation to raise its claim for damages in accordance with law. This plea was objected to by learned counsel appearing for the appellants on the procedural plea that when the appellate court had quashed the order of damages and there had not been any petition preferred by the Life Insurance Corporation before the High Court, the matter could not be raked up; all the more when it concerned the original tenant as well, who had been deleted from the array of parties before the learned Single Judge, by consent. In the result, the learned Single Judge held as follows:

".....I am of the clear view that if at all the matter is to be remanded to offer opportunity to the petitioners to prove their case of lawful sub-tenancy, in the facts and circumstances of the case, the interest of justice also require that the Corporation as a public body should get an opportunity to press its claim for the damages, in the event prove that the petitioners were unlawful sub-tenants and therefore in

unauthorised occupation of public premises."

(emphasis ours)

As a result, both the orders of the Estate Officer dated 17-3-1992 passed in Cases No.187/187-A of 1991 in proceedings under Section 5 and 7 of the Act and the appellate order of the Principal Judge, City Civil Court, Bombay, in Miscellaneous Appeal No.85 of 1992 were quashed in putting the matter back on the file of the Estate Officer, to be dealt with in accordance with law. It was made clear that the orders were set aside only insofar as the appellant company was concerned and not in respect of other parties.

This orders as said before, was left uninterfered with by the Letters Patent Bench.

The aggrieved appellant Company maintains that the High Court could not have deprived it of the advantage gained by the orders of the Principal Judge, City Civil Court, in rejecting the petition under Section 7 of the Act relating to the question of damages. It is asserted that the High Court has deprived the appellant-Company a validly accrued right, gained under the processual law of the country. Under the Act, Section 2(f) defines 'rent' in relation to any public premises, to mean the consideration payable periodically for the authorised occupation of the premises, together with certain inclusions. Sections 4 and 5 provide for issuance of notice to show-cause against an order of eviction and the ultimate eviction of the unauthorised occupant. Section 7 confers power on the Estate Officer to require payment of rent or damages in respect of public premises. If a person is an authorised occupant, he can be required to pay the rent within such time and in such instalments as may be specified in the order. Likewise, an unauthorised occupant of any public premises may be required by the Estate Officer to pay damages within such time and in such instalments as may be stipulated in the order. Of course, the Estate Officer in assessing damages would have regard to such principles of assessment of damages as may be prescribed as also to assess damages on account of use and occupation of such premises. It is thus plain and clear that unless the occupant is first adjudged as an unauthorised occupant, his liability to pay damages does not arise. In other words, if he is an authorised occupant, he may be required to pay rent but not damages. The quality of occupation and the quality of recompense for the use and occupation of the public premises go hand in hand and are inter-dependent. Such is the scheme of the Act.

The inherent temper of restraint of the High Court under Article 226 of the Constitution was posed and pressed into service by learned counsel for the appellants contending that the High Court should not have opened up a finalised litigation relatable to damages to barter a remand on the question of the quality of occupation of the appellant Company, i.e. whether it was authorised or unauthorised. It was maintained that by conducts the Life Insurance Corporation, respondent, had submitted to those orders and had not put them to challenge in proceedings under Article 226 and or Article 227 of the Constitution. On that axis it was asserted that the direction on remand to resettle the question of damages may be quashed, maintaining the other direction and order with regard to the nature of occupation. Regretfully we are not persuaded to adopt such course.

It is well-settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can

take cognisance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priority, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief. What precisely has been done by the learned Single Judge, is clear from the above emphasised words which be re-read with advantage. The question of claim to damages and their ascertainment would only arise in the event of the Life Insurance Corporation, respondent, succeeding to prove that the appellant Company was an unlawful sub-tenant and therefore in unauthorised occupation of public premises. If the finding were to go in favour of the appellant Company and it is proved to be a lawful sub-tenant and hence not an unauthorised occupant, the direction to adjudge the claim for damages would be rendered sterile and otiose. It is only in the event of the appellant Company being held to be an unlawful sub-tenant and hence an unauthorised occupant that the claim for damages would be determinable. We see therefore no fault in the High Court adopting such course in order to balance the equities between the contestants especially when it otherwise had power of superintendence under Article 227 of the Constitution in addition. We cannot be oblivious to the fact that when the occupation of the premises in question was a factor in continuation the liability to pay for the use and occupation thereof, be it in the form of rent or damages, was also a continuing factor. The cause of justice, as viewed by the High Court, did clearly warrant that both these questions be viewed inter-dependently. For those who seek equity must bow to equity.

Besides, it is noteworthy that the Principal Judge of the City Civil Court, had negated the claim of damages on taking a technical view of the matter because in his view the assessment had been made more on assumptions than on concrete evidence which was required to be adduced. Nowhere was the finding recorded by that Court that damages were altogether not due or that the appellant Company was not liable; the period involved therein being from 1-3-1979 to 28-2-1992. Much time has elapsed thereafter. The respondent Company continues to be in possession of the premises in question. It would in any case be liable to pay for the use and occupation thereof and that liability was only required to be given a legal character, depending upon the quality of occupation. The High Court, in our view, committed no wrong in putting the negated claim of damages on the scale of justice as a balancer, before granting relief, in setting aside the orders of eviction and effecting a remand, for fresh disposal in accordance with law.

For the foregoing reasons, we find no case is made out for our interference. As a result, this appeal fails and is hereby dismissed, with costs.